



IT IS ORDERED as set forth below:

Date: September 09, 2010

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	
)	CHAPTER 11
KIAMSHA COMMUNITY)	
DEVELOPMENT CORPORATION INC.,)	CASE NO. 10-72520-WLH
)	
Debtor.)	
_____)	
)	
DONALD F. WALTON,)	
United States Trustee, Region 21,)	
)	
Movant,)	
)	
v.)	CONTESTED MATTER
)	
GRADY A. ROBERTS,)	
)	
Respondent.)	
_____)	

**ORDER AND NOTICE OF HEARING
ON IMPOSITION OF SANCTIONS ON ATTORNEY GRADY A. ROBERTS
IN RESPONSE TO UNITED STATES TRUSTEE'S MOTION
FOR IMPOSITION OF SANCTIONS PURSUANT TO RULE 9011**

This Order and Notice of Hearing is in response to the Trustee's Motion for Review of Attorney's Fees Pursuant to 11 U.S.C. § 329 and for Imposition of Sanctions Pursuant to Rule

9011 [Docket No. 26] filed on July 21, 2010 (“Motion”). After notice and hearing, and for the reasons set forth below, the Court finds that Attorney Grady A. Roberts (“Mr. Roberts”) has violated Fed. R. Bankr. P. 9011(b)(1) as alleged by the United States Trustee. **Notice is hereby given to Grady A. Roberts and to the United States Trustee that a hearing will be held on the 5th day of October, 2010, at 10:00 a.m., Courtroom 1403, U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303 on the United States Trustee’s request for the imposition of sanctions.** The parties are hereby given notice that the Court may exercise its authority under Fed. R. Bankr. P. 9011(c), 11 U.S.C. § 105 and the inherent authority of the Court to impose sanctions upon Mr. Roberts if warranted. Such sanctions may include, but are not limited to, a fine, disgorgement of fees, requirement of continuing legal education, suspension of Mr. Roberts from the filing of any bankruptcy cases in the Northern District of Georgia for a period of time, reprimand or referral to the State Bar of Georgia and to the Committee on Discipline of the U.S. District Court for the Northern District of Georgia. A failure to attend this hearing by Mr. Roberts will indicate to the Court a lack of opposition to the imposition of any of the sanctions referenced.

BACKGROUND

Kiamsha Community Development Corporation Inc. (“KCDC”) filed this small business bankruptcy case on April 29, 2010, with Mr. Roberts signing the petition as Debtor’s attorney. KCDC is related to Kiamsha House Ministries Inc. (“KHM”) which is a debtor in a chapter 7 case currently pending in this Court as Case No. 08-82396-MHM¹. KCDC and KHM were both obligors on a note to Ridgestone Bank (“Ridgestone”) in the original principal amount of \$1,523,100.00. After an apparent default under the note, KHM filed its bankruptcy petition on November 3, 2008. The KHM case was originally filed as a chapter 11 case, but, upon a motion

¹ Mr. Roberts is not attorney of record for KHM.

filed by the United States Trustee to convert or dismiss the case, the case was converted to one under chapter 7 of the United States Bankruptcy Code. On June 10, 2009, the Court in the KHM case entered an order modifying the automatic stay to allow Ridgestone to exercise its rights and remedies pursuant to its security deed and to foreclose on the property serving as collateral and obtain possession of it. Upon the entry of the Order granting relief from the stay, KHM, and KCDC, began an extensive course of litigation involving Ridgestone.²

State Court Proceedings

On October 30, 2009, KHM filed a complaint in the Superior Court of Fulton County seeking to enjoin the scheduled November 2009 foreclosure. The Superior Court dismissed KHM's action on November 3, 2009. Ridgestone foreclosed on the property on November 3, 2009, and recorded its deed under power. Ridgestone then obtained relief from the automatic stay in the KHM bankruptcy case to confirm the foreclosure sale. On March 3, 2010, the Superior Court of Fulton County entered a confirmation order against both KHM and KCDC confirming the foreclosure sale. Ridgestone then began a dispossessory proceeding in the State Court of Fulton County against both KHM and KCDC because both occupied the premises which had been foreclosed by Ridgestone. Mr. Roberts, on behalf of KHM, answered the dispossessory action. On January 7, 2010, the Magistrate Court of Fulton County granted Ridgestone a writ of possession entitling Ridgestone to possession of the property occupied by both KCDC and KHM. However, on January 8, 2010, KHM, through attorney Valerie Adams with the same address as Mr. Roberts, filed a notice of appeal of the writ of possession. By order dated March 25, 2010, the State Court of Fulton County dismissed KHM's appeal, and on March 30, 2010, Ridgestone obtained a final writ of possession. However, on the same day, KCDC,

² The description of the course of litigation which follows is set out in Ridgestone's Emergency Motion for Relief from Stay and the exhibits thereto. [Docket No. 11].

through Mr. Roberts, filed a notice of appeal of the writ of possession. Also on March 30, 2010, KHM and KCDC, through Mr. Roberts, filed a lawsuit against Ridgestone in the Superior Court of Fulton County for, among other things, breach of contract, wrongful foreclosure, and breach of fiduciary duty. On April 12, 2010, KCDC, through Mr. Roberts, filed another lawsuit against Ridgestone in the Superior Court of Fulton County seeking to enjoin Ridgestone's eviction of the tenants from the property.³ On April 15, 2010, KCDC filed a notice of removal of the dispossessory action to the U.S. District for the Northern District of Georgia. On April 27, 2010, Ridgestone filed a motion to remand the case to State Court, and on May 4, 2010, the District Court entered an order granting Ridgestone's motion to remand the dispossessory action to State Court.

Bankruptcy Court Proceedings

All of the state court litigation efforts culminated in the filing of this bankruptcy petition by KCDC on April 29, 2010. The petition purports to be signed by Grady A. Roberts, Esq. of Roberts Law, LLC, 191 Peachtree Street, Suite 3300, Atlanta, Georgia 30303, as well as by Darryl Winston on behalf of the Debtor. The only additional papers filed by the Debtor on the petition date were a list of creditors holding the 20 largest unsecured claims, identifying only Ridgestone Bank. The Debtor did not file a mailing matrix as required by Fed. R. Bankr. P. 1007, nor its Schedules or Statement of Financial Affairs, nor a corporate resolution, nor any attorney disclosures under Rule 2016, nor any of the other documents required by the Bankruptcy Rules to be filed in connection with the filing of a petition.

On May 6, 2010, Ridgestone filed an Emergency Motion for Relief from Stay [Docket No. 11], which after hearing was granted on May 11, 2010. Mr. Roberts filed no papers in opposition to the Motion for Relief from Stay and did not appear at the hearing held on the

³ According to Ridgestone, as of May 6, 2010, it had not been served with either complaint.

Motion for Relief from Stay. Mr. Roberts never filed an application to be retained as counsel and, in fact, filed no papers in this case other than the petition, until he filed a Motion for Voluntary Dismissal of the case on May 28, 2010, at virtually the same time as the United States Trustee filed a Motion to Dismiss the Case.⁴ Both Motions were scheduled for hearing on July 22, 2010. Neither Mr. Roberts nor the Debtor nor anyone else appeared on behalf of the Debtor at this scheduled hearing on the Debtor's Motion to dismiss. The Court, therefore, entered an Order dismissing the bankruptcy case of KCDC for cause pursuant to 11 U.S.C. § 1112(b), but expressly retaining jurisdiction for the purpose of adjudicating the United States Trustee's pending motion against Mr. Roberts seeking review of his attorney's fees pursuant to 11 U.S.C. § 329 and imposing sanctions against Mr. Roberts pursuant to Fed. R. Bankr. P. 9011.

On July 21, 2010, the United States Trustee filed its Motion for Review of Attorney's Fees Pursuant to 11 U.S.C. § 329 and for Imposition of Sanctions Pursuant to Rule 9011. The Motion was served on Mr. Roberts at the address identified on the petition for Mr. Roberts. Mr. Roberts was also served on July 21, 2010, with a notice of the hearing on the United States Trustee's Motion, specifying the Motion and the requisite information regarding the hearing. The Court held a hearing on the United States Trustee's Motion on August 26, 2010. However, Mr. Roberts did not appear, nor did anyone else appear on Mr. Roberts' behalf. At the hearing, the United States Trustee announced it was withdrawing without prejudice the portion of its Motion requesting review of attorney's fees pursuant to 11 U.S.C. § 329, and proceeding only with the request for the imposition of sanctions pursuant to Rule 9011. Counsel for Ridgestone also appeared at the hearing.

⁴ The Court notes that the signature of Mr. Roberts on the Motion to Dismiss [Docket No. 18] does not appear to be the same as the signature of Mr. Roberts on the petition.

At the hearing, the various filings, Orders and omissions to file set forth above were established by the Court taking judicial notice of the Court docket. The United States Trustee also made the Court aware of the fact that Mr. Roberts filed five (5) chapter 11 cases in the Northern District of Georgia between the period April 29, 2010 and June 1, 2010, which cases have now been dismissed with the exception of one (1) case which was converted to a chapter 7. All of the cases followed the same pattern of a skeletal petition filed without the requisite supporting documentation, no application by Mr. Roberts to be approved as counsel, and no prosecution of the case. The cases filed by Mr. Roberts in addition to the above-styled case are as follows:

- i) RTA Enterprises, LLC, Case No. 10-73477-PWB, dismissed May 26, 2010;
- ii) Voices of Faith Ministries, Inc., Case No. 10-76358-MHM, dismissed July 16, 2010;
- iii) Subtle Elegance, LLC, Case No. 10-76360-WLH, converted to chapter 7 on July 22, 2010; and
- iv) Greenville United Christian Ministries, Case No. 10-73481-WLH, dismissed July 26, 2010

(collectively, the “Grady Roberts Cases”).

Counsel for Ridgestone also informed the Court that, while Mr. Roberts has not appeared at any of the hearings which this Court has scheduled, Mr. Roberts has continued to appear throughout the term of this case in various state court matters.

RULE 9011

The only matter before the Court is the United States Trustee’s Motion to find Mr. Roberts in violation of Fed. R. Bankr. P. 9011 and for the imposition of sanctions resulting from

any violation thereof, all with respect to this bankruptcy case only. Fed. R. Bankr. P. 9011(b) provides

By presenting to the court (whether by signing, filing, submitting or later advocating) a petition, pleading, written motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances, –

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

The United States Trustee contends that, by filing the bankruptcy petition of the above-styled Debtor and by signing the petition, Mr. Roberts presented the petition to the Court in bad faith and for the improper purpose of “hindering and delaying creditors of the Debtor in the enforcement of their rights under non-bankruptcy law, and without any bona fide rehabilitative purpose”. As indicated above, after a review of the pleadings, the arguments of counsel appearing at the hearing on the Motion, and the entire record of the case as well as the record of all the Grady Roberts Cases, the Court concludes and finds that Mr. Roberts violated Fed. R. Bankr. P. 9011(b)(1) by filing and signing the bankruptcy petition in this case.

Procedure for Sanctions

Fed. R. Bankr. P. 9011 provides in subsection (c) that “If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for violation.” The first condition referenced in the Rule is that a request for sanctions by a party other than the court must be instigated by the filing of a motion “made separately from other motions or requests,” and describing “the specific conduct alleged to violate” Rule 9011. Fed. R. Bankr. P. 9011(c)(1). The Court finds this requirement has been satisfied. The request for the imposition of sanctions

is made by the United States Trustee and the specific conduct of which the United States Trustee complains is set out therein. The request for sanctions is phrased as a “Motion for Review of Attorney’s Fees Pursuant to 11 U.S.C. § 329 and for Imposition of Sanctions Pursuant to Rule 9011”. Although the request for sanctions under Rule 9011 is combined with a request to review attorney’s fees under section 329, the Court finds that the separateness requirement of Fed. R. Bankr. P. 9011(c)(1) has been satisfied. The rationale behind this condition in Rule 9011 is the drafters’ concern that the respondent have clear notice of the motion for sanctions. *See Ridder v. City of Springfield*, 109 F.3d 288, 294 n.7 (6th Cir. 1997) (stating the separateness requirement does not foreclose combining a Rule 11 request with other provisions regulating attorney behavior, but is intended to prohibit inclusion of such request in motions on the merits). The drafters did not want a request for sanctions to be buried at the end of a motion for summary judgment or a motion to dismiss, but rather to be highlighted as a separate event. In this case, as in *Ridder*, the United States Trustee’s entire motion is a motion for sanctions. Although the United States Trustee initially provided the Court with alternative grounds for sanctions other than Rule 9011, there could be no misunderstanding by the Respondent that the entire motion was directed at the Respondent’s misconduct and that sanctions were being requested under Rule 9011 as well as under section 329. By the time of the hearing, the United States Trustee withdrew the alternative of section 329 and moved forward only on the Rule 9011 basis. Thus, the separateness requirement has been met.

Moreover, this Court’s finding in this Order is only as to the violation of Rule 9011(b). The Respondent is being provided further additional notice by virtue of this Order that there will be a subsequent hearing on the imposition of sanctions. The Court, therefore, concludes that the separateness requirement of Rule 9011 has been satisfied and that the Respondent’s due process rights have been preserved. *See Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575-76 (11th Cir.

1995) (stating that due process requires that the attorney be given fair notice that his conduct may warrant sanctions and the reasons why; the accused must also be given an opportunity to respond, orally, or in writing, to the invocation of such sanctions and to justify his actions).

Rule 9011(c) next requires that, prior to the filing of a motion for sanctions, there must be 21 days notice of the motion given to the respondent to give the respondent an opportunity to correct whatever mistakes have been made. The courts refer to this 21-day period as the “safe harbor period”. However, this safe harbor is inapplicable in this case as Rule 9011(c)(1) specifically provides, “except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)”. It is precisely the filing of a petition in violation of Fed. R. Bankr. P. 9011(b) that is at issue in this case and so the safe harbor provision is inapplicable.

Substantive Basis for Sanctions

The United States Trustee alleges that the petition of the above-styled Debtor was filed for an improper purpose. The text of the Rule itself includes as an improper purpose “to harass or to cause unnecessary delay or needless increase in the cost of litigation”. However, this is not an exclusive and exhaustive list of all of the improper purposes which may justify a finding of a violation of Rule 9011. The courts have generally applied an objective test in determining whether an improper purpose exists. *See Jones v. Int’l Riding Helmets, Ltd.*, 49 F.3d 692, 695 (11th Cir. 1995); *Travelers Prop. Cas. Co. of Am. v. Paramount Lake Eola, L.P.*, 2010 WL 2977981 (M.D. Fla. 2010). An improper purpose may be inferred from the consequences of the filing of a pleading or a motion, or if the specific pleading has been filed “in the context of a persistent pattern of clearly abusive litigation”. *Aetna Life Ins. Co. v. Alla Med. Services, Inc.*, 855 F.2d 1470, 1476 (9th Cir. 1988); *see also Stimson & Gale Entm’t, Inc., v. Amusement Indus., Inc. (In re Stimson & Gale Entm’t, Inc.)*, 61 Fed. Appx. 346, 348 (9th Cir. 2003) (unpublished) (a

pattern of abusive behavior may support an inference that a bankruptcy petition, when filed, was filed with an improper purpose). Here, there is no other conclusion but that the bankruptcy petition of the above-styled debtor was filed in bad faith for the improper purpose of delaying Ridgestone Bank's exercise of its state law rights which had been confirmed to it on more than one occasion by state courts.

The petition was filed as one of many maneuvers by this Debtor and its affiliate KHM to avoid relinquishing possession of the property which was security for Ridgestone Bank's loan. Before the filing of the bankruptcy petition, this Debtor had already filed a notice of appeal of a dispossessory proceeding, a motion to remove the dispossessory action to District Court, and two separate complaints in the Superior Court of Fulton County to enjoin the foreclosure proceeding and the eviction and to recover damages for wrongful foreclosure. Moreover, Mr. Roberts was the attorney acting on behalf of this Debtor in the state court litigation outlined above and, therefore, knew the pattern of litigation and knew the orders which had previously been entered by the various state courts. At the time he filed this petition, he knew as counsel for KCDC that the state court had already ruled that the property had been properly foreclosed by Ridgestone Bank and the foreclosure sale had been confirmed. He also knew that a writ of possession had been issued requiring this Debtor to leave the premises. This pattern of litigation continued despite the fact that relief from the stay to foreclose had been given to Ridgestone Bank in the KHM bankruptcy case, a state court had denied a request to enjoin the foreclosure, a state court confirmed the foreclosure sale, a state court granted a writ of possession, and a state court dismissed KHM's notice of appeal on the writ of possession. Based on these facts, there was no rehabilitative purpose in filing the bankruptcy petition and the petition was filed in bad faith.

Further evidence of the improper purpose of the filing of the petition is the petition itself. Fed. R. Bankr. P. 1007(a)(1) requires a debtor in a voluntary case to file with the petition "a list

containing the name and address of each entity included or to be included on Schedules D, E, F, G and H” and “[i]f the debtor is a corporation ... the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1”. Rule 1007(a)(3) requires that, in a chapter 11 case, the debtor file within 14 days after entry of the order for relief a list of the debtor’s equity security holders. Rule 1007(b) requires schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs all to be filed within 14 days of the filing of a petition. Moreover, since this Debtor was a small business debtor, 11 U.S.C. § 1116 requires the Debtor to file certain additional documents with the petition. This Debtor’s petition was filed on April 29, 2010, and it did not include the mailing matrix as required by the Rules or the statement of corporate ownership or any of the documents required by 11 U.S.C. § 1116. Moreover, the Debtor did not file within 14 days of the petition date any of the schedules or statement of financial affairs as required by Fed. R. Bankr. P. 1007. Additionally, Fed. R. Bankr. P. 2016(b) requires that, “Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States Trustee within 14 days after the order for relief ... the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity.” Mr. Roberts has never filed such a statement in this case and only belatedly filed the statements in the other Grady Roberts Cases after orders of the Court required him to do so or face contempt. Mr. Roberts never requested an extension of time to file any of the foregoing.

Lastly, Mr. Roberts’ conduct in this case is further evidence of the improper purpose of the petition. Mr. Roberts did not oppose the Bank’s motion for relief from stay, either in writing or in person. Further, after filing a voluntary motion to dismiss the case, Mr. Roberts did not

appear at the hearing on the motion to prosecute the motion. In short, Mr. Roberts took no action in this case other than the filing of a skeletal petition.

Therefore, the Court concludes and finds that Mr. Roberts filed the bankruptcy petition of the above-styled Debtor in bad faith for the improper purpose of harassing, causing unnecessary delay and needless increase in the cost of litigation of Ridgestone, and as part of a persistent pattern of abusive litigation with Ridgestone Bank in this case. This misconduct was knowing and willful, given Mr. Roberts' involvement in the multiple state court proceedings. Moreover, Mr. Roberts acted in bad faith in filing the petition to harass and delay Ridgestone in the pursuit of its rights. *See Barnes v. Dallas*, 158 F.3d 1212 (11th Cir. 1998).

CONCLUSION

Having found that Mr. Roberts has violated Fed. R. Bankr. P. 9011(b), the question before the Court now is whether sanctions should be imposed and, if so, the appropriate sanction to be issued. Rule 9011 permits the imposition of sanctions upon a violation of Rule 9011(b), but a sanction is not required. The type of sanction which the Court may impose is within the Court's discretion but, as provided in Rule 9011(c)(2), is "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." The United States Trustee has asked the Court to impose a monetary sanction of \$1,000.00. The Court may also consider additional monetary sanctions, or disgorgement of fees, and may consider non-monetary sanctions, including requiring Mr. Roberts to attend continuing legal education classes, and/or prohibiting Mr. Roberts from filing any bankruptcy petitions in the Northern District of Georgia for a period of time or until certain goals have been achieved, or reprimand or referral to the State Bar of Georgia and to the Committee on Discipline of the U.S. District Court for the Northern District of Georgia. In addition to the authority granted the bankruptcy court to impose sanctions pursuant to Fed. R. Bankr. P. 9011(c), the bankruptcy court also has authority under 11

U.S.C. § 105 and its inherent authority to enter necessary or appropriate orders to sanction misconduct by attorneys that appear before it. *See Chambers v. Nasco*, 501 U.S. 32, 111 S. Ct. 2123 (1991).

As stated above, YOU ARE HEREBY GIVEN NOTICE THAT THE COURT WILL HOLD A HEARING ON THE 5TH DAY OF OCTOBER, 2010, AT 10:00 O'CLOCK A.M., COURTROOM 1403, U.S. COURTHOUSE, 75 SPRING STREET, S.W., ATLANTA, GEORGIA 30303 ON THE TRUSTEE'S MOTION FOR THE IMPOSITION OF SANCTIONS ON ATTORNEY GRADY ROBERTS FOR THE VIOLATIONS OUTLINED HEREIN WHEREIN THE COURT WILL CONSIDER BOTH MONETARY AND NON-MONETARY SANCTIONS AGAINST MR. ROBERTS, INCLUDING WITHOUT LIMITATION A FINE, DISGORGEMENT OF FEES, A REQUIREMENT OF CONTINUING LEGAL EDUCATION, SUSPENSION OF MR. ROBERTS FROM FILING ANY PETITIONS IN THE BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA FOR A PERIOD OF TIME, REPRIMAND OR REFERRAL TO THE STATE BAR OF GEORGIA AND TO THE COMMITTEE ON DISCIPLINE OF THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA.

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